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JOHNSON v. BARHAM, JUDGE.—Decided at Richmond, March 14, 1901.—*Keith, P. Absent, Whittle, J.* :

1. STATUTES—*Enrolled bill—Printed acts—Conflict.* In case of conflict between the enrolled bill and the published Act, the enrolled bill is the best and controlling evidence of the legislative intent.

2. CONSTRUCTION OF STATUTES—*Interpolating words.* Courts cannot, by construction, interpolate into statutes words which do not appear there, when such interpolation is not plainly deducible from the context or other portions of the Act, and the omission would not render the Act incongruous or unintelligible, nor lead to absurd results.

3. NEWPORT NEWS—*Charter—Police Justice—Removal—Appeal.* The charter of the City of Newport News, as amended by an Act approved January 17, 1900, does not give the Chief of Police of said city, upon removal, a right of appeal to the Corporation Court of said city. Acts 1899–1900, p. 70.

4. CHANCERY JURISDICTION—*Title to office—Prohibition.* A court of chancery has no jurisdiction to try a question of title to an office which has been passed upon by competent authority, from whose judgment there is no appeal, and its attempt to exercise such jurisdiction will be restrained by a writ of prohibition.

SCHRIEBER, SONS & CO. v. CITIZENS' BANK OF NORFOLK.—Decided at Richmond, March 14, 1901.—*Harrison, J. Absent, Whittle, J.*

1. BUILDING CONTRACT—*Sub-contractor—Case in judgment.* Under the terms of the contract in suit, the owner of the building being erected had the right to bind himself personally to a sub-contractor for a portion of the work, and deduct the cost thereof from the contract price agreed to be paid to the contractor.

2. MECHANIC'S LIEN—*Sub-contractor—Extra work.* In a contract between the owner of a building and sub-contractor, work not covered or contemplated by the original contract, and which has been paid for by the owner, is to be considered a separate and distinct transaction.

3. MECHANIC'S LIEN—*Discount of contractor's notes—Assignment.* As against sub-contractors, it is not error to allow the owner credit for notes discounted by him, which were given by the contractor to other sub-contractors for work done or materials furnished, nor for similar notes held by banks and taken up by the owner, nor for orders drawn on the owner by the general contractor in favor of sub-contractors. Each of such credits represents money paid by the owner for work done or materials furnished for the erection of the building. They are not such assignments or transfers as are prohibited by Act of Assembly, 1895–96, p. 379.

4. MECHANIC'S LIEN—*Reservation of percentage—Sub-contractor.* A provision in a building contract by which the owner retains a percentage of the cost of construction until the completion of the building, and stipulates that he may supply any deficiency and deduct the cost from any money due or to become due under the contract, is intended for the benefit of the owner alone, and not for sub-contractors who may be thereafter employed.

5. MECHANIC'S LIEN—*Sub-contractors—Personal liability of owner—Preferred claim.* The owner of a building in course of construction is under no obligation to protect

the interest of a sub-contractor unless the latter has complied with the provisions of the Statute (Code, sec. 2479, as amended Acts 1893-'4, p. 523), rendering the owner personally liable to the sub-contractor to the extent that such owner is indebted to the general contractor. Where, however, such personal liability has been duly created, it becomes a preferred claim, and is to be paid in full in preference to the claims of other sub-contractors who have not obtained a like advantage, but have subsequently perfected their liens under sec. 2477 of the Code.

RICHMOND ICE CO. v. CRYSTAL ICE CO.—Decided at Richmond, March 14, 1901.—*Buchanan, J.* Absent, *Whittle, J.*

1. CONTRACTS—*Goods to be manufactured—Surplus—Inability to perform—Negligence.* A defendant who has contracted to furnish certain goods to the plaintiff "out of his surplus product and so as not to interfere with existing contracts" cannot be excused on the ground of inability to perform, where the inability was the result of the defendant's failure to exercise reasonable diligence and care in putting his machinery in a condition to enable him to perform.

2. DAMAGES—*Breach of contract to deliver goods.* Under the evidence in this cause, the measure of the plaintiff's damages for the failure of the defendant to deliver goods according to contract, which the plaintiff has been compelled to purchase of another, is the difference between the contract price and the price which the plaintiff has been compelled to pay.

3. CONTRACTS—*Failure to deliver goods—Refusal to accept—Damages.* Under a contract to pay for a given quantity of ice per year, whether the whole quantity is accepted or not—the same to be delivered from day to day as the purchaser may require—the vendor is not entitled to recover for the difference between the quantity contracted for and that actually accepted, where, during a portion of the time, the vendor was unable to furnish the ice as the parties had agreed.

HORTON v. COMMONWEALTH.—Decided at Richmond, March 21, 1901.—*Keith, P.*

1. CRIMINAL LAW—*Principal in second degree—Defining offence of principal.* On an indictment of a person as principal in the second degree of murder in the first degree, it is proper for the trial court to define murder of the first degree as it is included in the indictment against the principal of the first degree, and is one of the degrees of homicide with which the defendant is charged as having aided and abetted.

2. CRIMINAL LAW—*Murder—Deadly weapons—Previous possession—Presumption.* A mortal wound given with a deadly weapon, in the previous possession of the slayer, without any or upon very slight provocation, is *prima facie* willful and premeditated killing, and throws upon the accused the necessity of proving extenuating circumstances.

3. CRIMINAL LAW—*Principals in first and second degree.* Principals in the first degree are those who are the actors, or actual perpetrators of the crime—those who are the immediate perpetrators of the act. Principals in the second degree are those who did not with their own hands commit the act, but were present, aiding and abetting it. It is not necessary in order to make a person principal in